

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

WP(C).No. 28899 of 2006(M)

PETITIONER:

**R. JANANESWARA PRABHU, AGED 47 YEARS,
S/O.LATE RAVEENRANATHA DESOM,
PAYYANNUR AMSOM, TALIPARAMBA TALUK,
KANNUR DISTRICT.**

BY ADV. SRI.M.V.AMARESAN

RESPONDENTS:

- 1. PAYYANNUR SERVICE CO-OPERATIVE
BANK LTD., REPRESENTED BY ITS PRESIDENT,
PAYYANNUR.**
- 2. THE ASSISTANT REGISTRAR OF CO-OPERATIVE
SOCIETIES, TALIPARAMBA, KANNUR.**
- 3. BRANCH MANAGER, PAYYANNUR SERVICE
CO-OP.BANK LTD., MAIN BRANCH,
PAYYANNUR.**

BY ADV. SRI.M.SASINDRAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 15/11/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX IN W.P.C.NO.28899/06

PETITIONER'S EXHIBITS

- EXT.P1 TRUE COPY OF PETITION FILED BY THE PETITIONER BEFORE
THE SECOND RESPONDENT DTD. 20-10-06**
- EXT.P2 TRUE COPY OF REPLY FOR THE APPLICATION FILED BY THE
PETITIONER IN ARC NO.2339/91-92 DTD. 9-7-07**
- EXT.P3 TRUE COPY OF REPLY FOR THE APPLICATION FILED BY THE
PETITIONER IN ARC NO.2339/91-92 DTD. 9-7-07**
- EXT.P4 TRUE COPY OF APPLICATION FILED BY THE PETITIONER
BEFORE THE SECOND RESPONDENT DTD. 14-08-07.**
- EXT.P4(A) TRUE COPY OF RECEIPT SENT ALONG WITH EXT.P4
APPLICATION.**
- EXT.P4(B) TRUE COPY OF ACKNOWLEDGMENT CARD SENT ALONG
WITH P4 APPLICATION.**

RESPONDENT'S EXHIBITS

- EXT.R1(A) TRUE COPY OF THE AWARD DTD. 31-3-92 IN ARC NO.2338/91-92**
- EXT.R1(B) TRUE COPY OF THE AWARD DTD. 31-3-92 IN ARC 2339/91-92**

/True Copy/

PA to Judge.

K.M.JOSEPH, J.

W.P.(c).No.28899 OF 2006

Dated this the 15th day of November, 2007

JUDGMENT

Two awards were passed against the petitioner at the instance of the first respondent. Petitioner has approached this court seeking a declaration that the remedy in respect of those awards is lost by the operation of law as the awards were not executed within the prescribed period under law and to declare that the attempt to recover the amount is illegal. Allied reliefs are also sought. Petitioner relies on Exts.P1 to P4 to contend that the awards obtained cannot be executed against the petitioner as under Section 76 of the Co-operative Societies Act, the period of 12 years have run out without the respondent executing the award.

2. Counter affidavit is filed by the first respondent. Therein, interalia, it is stated that for executing the award dated 31-03-1992 in A.R.C. 2338/1991-92 the society has filed E.P.No.274/92-93, in the year 1993 itself. For executing the award dated 31-3-1992 in A.R.C.2339/91-92, the society has filed

E.P.No.259/92-93 in the year 1993 and that the execution petitions have not been finalised, it is stated.

3. Reply affidavit is filed by the petitioner. Therein, interalia, it is stated that petitioner submitted application seeking details of the execution petition. It is stated that petitioner was told by respondent No.2 that there is no such records with that office. It is further stated that even assuming but not admitting that such E.P. had been filed, that will not give the bank a fresh period of limitation. Limitation starts from the date of order and within 12 years thereafter the decree should be executed, it is stated. In other words, according to the petitioner, the decree become unexecutable.

4. Section 76 of the Co-operative Societies Act in so far as it is relevant in the form of (ii) proviso to sub clause b reads as follows.

“ within twelve years from the date fixed in the order, decision or award and if no such date is fixed, within twelve years from the date of the order, decision or award, as the case may be ”.

5. Therefore the limitation in executing the award will be in the form of an embargo against execution of an award unless

the application for such recovery is made within 12 years from the date as provided in the proviso. According to the respondent, they have filed the execution petition in 1993 itself.

The writ petition is disposed of directing that the awards in question obtained by the first respondent cannot be executed unless an application has been made for the recovery as provided in (ii) proviso to sub clause b of section 76 which has been extracted by me in the judgment.

(K.M.JOSEPH, JUDGE)

SV.

